

TO THE
HONOURABLE
THE
Commons of England
ASSEMBLED IN
PARLIAMENT.

*A Short Account of One of the Grand Grievances of
the Nation, Humbly Presented by James Whifton.*

With Submission to your Honours,

THAT State or City which would preserve it self in good Order, and free from the disturbances of Ill Government, must cherish the just Impeachments and Accusations of the People, against those who contrary to Law, through Ambition, Avarice, Pride, Cruelty, Oppression, Extortion, Violation or Corruption of Law, &c. seek to destroy their Liberties, Properties and Right, which have long been a very severe Judgment over this Nation. But now by God's Mercy, the Extraordinary Goodness of Our King, and Your Great Prudence, We hope to see the many Grievances (which this Land Mourns under) redressed; Illegal proceedings punish'd; and Oppression so discountenanced, that succeeding Times shall not dare to barter Justice for Gold, nor sacrifice our Priviledges to Riot, nor truck away the Liberty of their Countrey for a little Court Holy-Water.

The Nation being thus redrest and secured against Tyranny and Oppression, &c. it will not only divert God's Judgments which hang over its head, but greatly improve their Riches, increase the Inhabitants, and thereby much lessen the burthen of Taxes, &c.

It cannot sure be censured as unseasonable (because always just and necessary) to remind this Honourable House, in whose power only the Remedy lies, of an eminent Inconvenience to the Nation, which is the Sale of Publick Offices; In reference to which, I shall chiefly confine my self at present to the Honourable City of London, the Envy of Europe, Rome's Terror, England's Heart, where the Vital Spirits circulate, and the Grand Pattern by whose Measures smaller Corporations are apt to make their Precedents.

That which I therefore humbly offer to Consideration is, That 'tis Dishonourable and of very dangerous Consequence, to Expose publick Offices and Places to Sale. For it deflowrs the Virgin Purity of Justice by stopping the Avenues that lead to her Palace, with Mercenary Encumbrances, Exposes the Purchasers to almost inevitable

Temptations, and gives an inlet and plausible Colour to defending Injustice, Eribery, Extortion and Oppression. But to double and treble the value, to manage them for the best advantage of the Seller, and to put him upon the Rack of Improvement too; what is it but to bespeak the unfittest Men, either through want of Honesty or Experience that we can meet with, to manage these Affairs and Places in which Justice, Reason and Prudence, require the most upright and most judicious persons that can be procured.

Because the Fees of Attorney's, Clerks, Serjeants, Goalers, &c. in the Courts of London are vastly raised, through the increase of Injustice, by reason of the too frequent, malicious and impertinent Actions, and general Corruption among them: Yet no Magistrate ought from thence to raise the value of an unlawful Sale, because he finds a numerous sort of People thriving and doing well, by living and doing ill. And the same Reason holds against the Keepers of Prisons, who would never give such Excessive Rates for their Places; nor could they live at such an extravagant height of Pride were they not wicked Grinders of the Poor; Men that lay the whole design of their Advantage upon the Calamities of the Miserable; at which the Magistrate may truly be said too much to connive, who suffers his Coffers to be fill'd with these Golden Temptations, because he sees them cloathed so rich, and grow so Fat upon the Ruines of the Unfortunate; which is quite contrary to the Office of the true Magistrate, who ought to have a careful Eye upon the growth of Oppression, to curb and remove the Exorbitancies of Injustice, and to Sear away the proud Fleish of Avarice and Rapine, and not to sell his Authority to the Evil-doer. Therefore it is not to be question'd, That whoever receives Money for any publick Place, such Person does but receive a publick Bribe, which only Custom, and perhaps too common Connivance justifies. For never any Man, came to any Office by Money, but he was forced to exercise his Authority wickedly and unjustly. He that buys must sell, or he loses by the Bargain Which makes the publick Offices of London, like Briars, to which Sheep repairing for shelter, lose a Lock.

If an Appeal be made to Holy Scripture, there is most certainly no Learning under the Sun so Chymical, that can extract the least drop of Authority from thence, for the Sale of publick Justice or its Dependencies; but excessive penalties it may find enough, upon all manner of Extortion, and upon all those that connive at, and suffer it; so severely menaced, and so truly threatned by Him that never fails to perform, that nothing but a fatal Irony can excuse the contempt and neglect thereof, as if the Ears of Profit could not hear the Cries of the Poor for the thundering Noise of God's Judgments, so severely denounc'd on their behalf. However they who require more particular satisfaction, may read that Excellent Oration of the Prophet Samuel, which he made upon the Resignation of his Government.

Being thus Banished from the Commonwealth of Israel, this Tenent finds no better Entertainment among the Heathen, with whom we find these two Maxims, like two Golden Pillars supporting the most flourishing, and most Victorious Cities in the World, which Aristotle hath not been a little Industrious to maintain. First, That the Sale of Offices is the greatest wrong that can be offer'd to a Commonwealth. Secondly, That Money ought not to buy those Places, which may, nay ought to be the Reward of Virtue, and are the surest means to supply the Necessities of Good Men. The Sale of Offices in the flourishing times of the Athenians was abominated, and by the Lacedæmonians exploded as a Crime: and the Roman Empire in its Increase and flourishing Condition, fined and punished those that sought Offices unjustly; and they then first fostered Dissention among themselves, and their own Destruction, when they brook'd so patiently the Sardonic Scoff of Jugurth, *All things at Rome are to be had for Money.*

Certainly, the Persian Cambyfes had been too severe, when he sold one of his Judges for Extortion, had he sold him his Place, much more had he farm'd it to him at a rack Rent: Nor can we believe the same Judge's Son would have given an exacted sum to sit upon his Father's Skin, which he was forc'd to receive for his Cushion, being placed in his Father's Room, to terrifie him from the same Offence, which the King then told him would deserve the same Punishment.

I might here repeat more of History, but my design is not Prolixity. To ascend then from History to Reason, we meet with a Thesis fairly bordering upon the Law of Nature, as undeniable as Truth it self; That there is nothing arms a Purchaser with

with a more confident defence of his unjust Dealings, than Money given for an Employment. It makes him that he blushes not to be accused of Rigor and Extortion, to be arraigned for Violence, nor values he the Frowns of Magistracy, while with a daring Forehead he is able to upbraid his Superiour, telling him, he had not his Place for Nothing, but paid soundly for it, and therefore hopes he shall not be debarr'd from making the best Advantage of what he has purchas'd at so dear a Rate. A Thing so obvious, that reprove him never so sharply, never so severely, it seems Collusive and merely Combination, so little does it signifie. For turn him out of Possession, and the Succeeding Chapman is discouraged. Nor does the Judge himself escape the smutty censure of Self-Interest and Partiality, that he only removes the old One in hopes of a better bargain from a Successor, that must be worse because he gives more for it. Here Justice may be said to be thoroughly Blind, while the Seller and Abetter throw away the Vail of Impartiality, and press down their Eyelids with their own Fingers. Thus, First rate Offences, Misdemeanours of the upper Form, must be conniv'd at and palliated, for fear of spoiling the Market. As for Peccadilloes, and petty Oppressions, they are little or not at all regarded. Yet these are the little Vermin that insensibly devour the Poor and Needy, that have most need of Succour. What is the difference between the Canker that indiscernably consumes, and the destructive speed of *Aqua Fortis*? They both destroy: But the Canker far more insensibly, as being less attended by the hand of Care and Preservation. A Misdemeanour of *Three Hundred Pound* makes a great Noise; yet proves perhaps but singly fatal, when the same Sum divided into Crown Rapines shall destroy as many individual necessitous Families, impoverished before and altogether helpless, without creating any other sounds but those of neglected Lamentations. So that the Sale of such Offices is positively against the *Tenth Commandment*; as also against the several Laws of the Land (as hereafter will appear). For what greater Injury can a man do his Neighbour, than to deprive him of the greatest Right that is due to him? To debar him of that Justice which ought to be afforded him in his Extremity? And not only in this manner to injure his Neighbour, but his poor Neighbour too, the particular Client of God himself? For remedy of which the Supreme Legislator made no Law, but frequent Admonitions, as if Man could not be guilty of so great an Impiety as to rob the Spittle, which is an accumulated Murther. It is injurious to him that sells: for how can he reach forth his hand to receive the free boons of Mercy from the God of Pity and Compassion, while polluted with the Price of Rapine, Violence and Injury?

The Sale of the Keepers Places of *Ludgate, Newgate*, with the *Compters*, &c. and the unexpressible extravagant Extortion they make thereby, brings me to urge this Matter a little closer; which are at *Who gives most*? An hainous Demand in the Barter of those *Shops of Cruelty*! A strange piece of absurd Severity! To sell the Freedom of a Captive; An Usurpation certainly beyond Law (to sell that little Liberty which the Law has left a Prisoner) to the disposal of a *Turnkey*. The Law makes him a Captive to his Creditor, and the Magistrate afterwards surrenders him up for Money a Slave to his worse than *Argier-Keeper*? Shall the Publick Houses built at the Cities Charge be sold for private Lucre? So that every Room in a prison becomes a shop of *Barbarism* and *Arbitrary Power*, where the chief *Basha* of Iniquity Exercises an inhumane Tyranny, and squeezes the very *Faves* and *Caput Mortuum* of a perish'd Estate as long as the least drop will come, by the same Art as they fetch Oyl out of Bricks; first heating the poor Prisoner in the Fire of his threatening Indignation, and then quenching him again in the sweet show of a little Favour, while any moisture of Gain appears.

Here then lies the force of the *Dilemma*; Either a Prisoner for Debt may be injured in Prison, or not. Either the Injuries repeated, are Injuries, or none. If the Negative be allow'd; then all that has been already said has been to no purpose, and *Holy Writ* might have been more sparing of its Exhortations. If the Affirmative be asserted, then he that sells a *Goalers Place*, &c. sells the Liberty, the Estate, the Person, nay, the very Lives of the Prisoners under his Jurisdiction, seeing that through the Cruelty of their Keepers so many poor people have been stript to their naked Skins, and when all was gone, have been suffocated in Holes and Dungeons, to the loss of many of their Lives, Dishonour of our Nation, and Scandal of the Christian Religion.

But the Civil Law, to which our own has nothing repugnant, informs us in the very words of that great Lawyer *Ulpian*, That a Prison is a place of *Restraint* and not of *Punishment*. That a Prison, where there is Hunger and Thirst is no Prison, but a place of *Torture*. That no severe or bad Usage is there to be admitted, where the Person in debt remains, not as a Slave, but only as a pledge and security for the Creditor's satisfaction. For which reason the Emperour *Honorius* affirmed, that it was the principal Duty of a Judge, to be frequently inform'd by the prisoners themselves of the state of their Captivity, that no Office of Humanity might be wanting to men lockt up in Confinement. And so merciful were those Times, that if a prisoner died in Prison, the Law presum'd it the fault of the Keeper, who was not to deny either Food or Bedding to the person in Custody.

But purchas'd Cruelty is now grown so bold, that if poor Men pay not Extortionary Fees and rack't Chamber-rent, they shall be crouded into Holes and Commonsides, to be devour'd by Famine, Lice and Diseases. Which being so undeniable, I appeal to the Tribunal of Justice it self, by what Law, or by what Authority, not claiming under the bad Title of Illegal Custom, any Sheriff, who is the immediate Goaler himself, and ought to receive the Custody of the Prisoner *Gratis*, can so unkindly presume to sell the Deputation of any Man's Liberty and Life to the Comptrol of sordid and imperious Avarice.

I would fain know, by what surmise of Common Sense a Keeper of a Prison, can demand a Recompence or Fee from a Prisoner for detaining him in Prison? There is an Admission-Fee, he cries. Alas! How is man fallen from the Image of God and his Reason, to believe that any Person can deserve a Reward for only opening the door of Misery and Destruction to annoy his Neighbour and common Friend? For being so kind as to admit him into the horrid Grave of Imprisonment? There is a Dis-mission Fee too, but this altogether as absurd, to demand Money for letting him go that the Law has set free; for opening the Door to let him out of Custody whom the Receiver ought not to detain. For his Care in the Interim, let them pay him that set him at work. The Prisoner is no way beholding to him for his Care: for 'tis that which he desires to be without. Therefore saies the *Civil Law* in this Case, if there be any thing due to a Keeper, it is due from the Creditor, whose duty it is to afford Nourishment and other Supports of Life to him whom he keeps in Prison; and therefore the Keeper might refuse to take the Prisoner into Custody, till he had bargain'd with the Creditor for the Prisoner's Maintenance, as may be observed out of the Antient Volumns of the most Learned Civilians. But now such is the Confidence of a Purchaser, that to regain his purchase Money, and maintain himself and his Family besides in Luxury, Pride and Idleness, he sells his Taphouse at prodigious Rates; so that where poor men ought to have best and cheapest, they have the worst in Quality, and the smallest in Quantity, which makes the price excessive. He Farms his Beds to meer *Harpies*, and his great Key to such pieces of imperious Cruelty as are the worst of Mankind. And it is a shame to repeat the daily Insolencies and Indignities, which the Prisoners and their Friends are forc'd to receive at their hands. But see, I pray! whither will not lewd Precedents at last lead us? It will perhaps be thought impertinent to dispute a Goalers demands for admitting us into his loathsome Mansions, when even the Common Hangman, no doubt encouraged by such Examples, will scarce give a Malefactor a Cast of his Office without a Bribe, demands very formally his Fees, forsooth, of the Person to be executed, and higgles with him too as nicely as if he were going to do him some mighty kindness.

There be those that say the Dignity of the City Magistrate is by the Sale of Offices supported. But with what dishonour do these Men revile the City, and the Magistrates of the City, at the same time? For so careful is the City to elect Men of Estates proportionable to their Dignity, that there is no need of any sinister Assistance to maintain the City Grandeur. No ill got Gains, but Mercy, Justice and upright Prudence, are the Supports of a City. Is it not a goodly sight to see the Tears of the Poor, congealed by a Frost of neglected Charity and Injustice into a Pearl, glittering in the Ears of such or such a Lady? To behold the Scarlet of the Receiver's Magistracy died with the Blood of helpless *Innocents*, or the purchase of *Extortion*? To see

see one of the Chief Punishers of Iniquity drinking Healths of forgetful plenty in *Four Hundred Pound Goblets*, the price of his own Infamy, and a Serjeant's Roguery? Such fights as these perhaps we can only by Conjecture ghes at, but the All-seeing Eye of Heaven beholds all these *Blind Bargains*, and it is the same thing whether the Accompt fall heavy on the Receiver or his Offspring.

London is a City whose Government deservedly challenges the Preeminence of any City now flourishing throughout the Universe. *Rome* the Mistress of the World could not Conquer her self; but oftentimes lay weltring in the Blood of her own *Citizens*; nor could she hinder her own streets from being the Stage, whereon so many dismal Tragedies of Intestine Discord were Acted. Hear the reason from the Words of one of her own Poets.

*'Cause then they Justice basely Bought and Sold,
And Ancient Virtue was postpon'd to Gold.*

But *London* has been blest'd with such a continued Calm of Peace for so many Centuries of Years, that never any City yet enjoy'd. Is it not great pity that so harmonious a piece of Politick Government should be disturb'd and disorder'd by violent Usurpation? *Rome* was only rich with the prey of Rapine, wealthy in the Trophies of successful Ambition: But *London* shines a famous Pile, Opulent in the Gains of honest Industry. *Rome*, the Mart of War and Slaughter, *London*, *Caesar's Noble Emporium*. But damn up the Current of her *Meum* and *Thum*, sell her seats of Justice, and how will all her splendor be Eclips'd? *Rome* had only the dim Lamps of Morality, the obscure Lights of sententious *Epicurism* and *Stoicism* to guide and instruct her: But *London* enjoys the most Orient Beams, the most unclouded Sunshine of Divine Truth and Doctrine. I am unwilling to urge it any farther. *Rome* was a City, than which there was none in the World more careful to relieve the poverty of her Citizens, of which in the times of her Innocence she had many. No question but in *London* there are many Good Men that unavoidably fall to decay: Where could the City bestow her places more Honourably than upon such? What could the City speak more Magnificent in History, than to boast that the very Train of her Magistracy was sufficient to support the chiefest and choicest of her decay'd Members, content with the Lawful and Modest Gains of their Employments? But on the contrary what more dishonourable than to sell her poor Citizens to be Dilaniated and Macerated by the hand of Injustice, and for Money to make slaughterhouses and shambles of her Houses of Restraint? For a City so fairly deckt with the precious Jewels of Freedom and Priviledge to sell the last remains of a Prisoners Comfort?

This Honourable House therefore being thus truly inform'd of these Abuses, has from hence sufficient Grounds to make a farther Inspection into these crying Enormities. And from whence can we expect Redress, but from those Noble and Worthy Patriots, who have already made so fair a progress toward a thorough Reformation of the past Miscarriages of a Corrupt and Arbitrary Government. And indeed it would be a Crime to think that They who sit with such a steady resolution to re-establish the long neglected Order of Law and Justice, will omit the utter Eradicating of whatever their Great Wifdoms shall judge pernicious to their Grand Design. So that it would be a high breach of Manners to press the farther Consideration of this affair to this August Assembly, otherwise than by laying before your Honours a short view of those Laws already in force against the Sale of Offices, wherein is also contain'd a recital of the Laws against the Sale of Publick Offices already provided by our Ancestors, as also of the Jaylors and other Officers Fees, with their several Duties to the Prisoners. Which though so strongly penn'd, have hitherto, through the prevailing power of Corruption and Injustice, been little or not at all regarded.

This ACT was made Anno 5. 6.

Edw. 6. Cap. 16.

THE Penalty for Buying or Selling of some sort of Offices for the avoiding of Corruption which may hereafter happen to be in the Officer and Ministers in those Courts, Places or Rooms, wherein there is requisite to be had the true Administration of Justice, or Services of Trust, and to the intent that Persons Worthy and Meet to be advanced to the Place where Justice is to be Ministred or any Service of Trust executed, should hereafter be preferred to the same, and no other.

Be it therefore Enacted by the King our Sovereign Lord, the Lords Spiritual and Temporal, and the Commons in this present Parliament Assembled, and by the Authority of the same, That if any Person or Persons at any time here-after Bargain or Sell any Office or Offices, or Deputation of any Office or Offices, or any Part or Parcel of any of them, or receive, have, or take any Money or Fee, Reward, or any other profit directly or indirectly, or take any Promise, Agreement, Covenant, Bond, or any assurance, to receive or have any Money, Fee, Reward, or other profit directly or indirectly, for any Office or Offices, or for the Deputation of any Office or Offices, or any part of them, or to the intent that any Person should have, exercise or enjoy, any Office or Offices, or the Deputation of any Office or Offices, or any part of any of them, which Office or Offices, or any part or parcel of them, shall in any wise touch or concern the Administration or Execution of Justice, or the Receipt, Comptrolment, or Payment of any of the Kings Highnesses Treasure, Money, Rent, Revenue, Account, Aulneage, Auditorship, or Surveying of any of the Kings Majesties Honours, Castles, Mannors, Lands, Tenements, Woods, or Hereditaments; or any the Kings Majesties Customs, or any Administration or necessary Attendance to be had, done or executed in any of the Kings Majesties Custom-House or Houses, the keeping of any of the Kings Majesties Towns, Castles or Fortresses, being used Occupied or appointed for a Place of strength and defence, or which shall concern or touch any Clerkship to be Occupied in any manner of Court of Record, wherein Justice is to be Ministred: That then all and every such Person and Persons that shall so Bargain or Sell any of the said Office or Offices, Deputation or Deputations, or that shall take any Money, Fee, Reward, or profit for any of the said Office or Offices, Deputation or Deputations, of any of the said Offices, or any part of any of them, or that shall take any Promise, Covenant, Bond, or Assurance for any Money, Reward or profit to be given for any of the said Offices, Deputation or Deputations of any of the said Office or Offices, or any part of any of them, shall not only lose and forfeit all His and Their Right, Interest and Estate, which such Person or Persons, shall then have, of, in or to any of the said Office or Offices, Deputation or Deputations, or any part of any of them, or of, in, or to the Gift or Nomination of any of the said Office or Offices, Deputation or Deputations, for the which Office or Offices, or for the Deputation or Deputations of which Office or Offices; or for any part of any of them, any such Person or Persons, shall so make any Bargain or Sale, or take, receive any Sum of Money, Fee, Reward or profit, or any promise, Covenant or Assurance to have or receive any Fee, Reward, Money or profit: But also that all and every such Person or Persons, that shall give or pay any Sum of Money, Reward or Fee, or shall make any Promise, Agreement, Bond or Assurance for any of the said Offices, or for the Deputation or Deputations of any of the said Office or Offices, or any part of any of them, shall immediately by and upon the same Fee, Money

Money or Reward given or paid, or upon any such Promise, Covenant, Bond or Agreement, had or made for any Fee, Sum of Money, or Reward to be paid, as is aforesaid, be adjudged a disabled Person in the Law to all intents and purposes, to have, occupy or enjoy the said Office or *Cook. lib. 12. 78.* Offices, Deputation or Deputations, or any part of any of them, for the which such Person or Persons, shall so give or pay any Sum of Money, Fee or Reward, or make any Promise, Covenant, Bond or other Assurance, to give or pay any Sum of Money, Fee or Reward.

And be it also Enacted by the Authority aforesaid, That all and every such Bargains, Sales, Promises, Bonds, Agreements, Covenants and Assurances as before specified, shall be void, to and against Him and Them, by whom any such Bargain, Sale, Bond, Promise, Covenant and Assurance shall be had or made.

Cook. Rep. Lib. 12. 78. Hill. 8. Jac.

IN this very Term in the Case of Dr. *Trevor*, who was Chancellour of a Bishop in *Wales*, it was resolved that the Office of a Chancellour and Register, &c. in the Ecclesiastical Courts, are within the Statute 5 *Edw. 6. Cap. 16.* The Words of which Statute are, *Any Office, &c. which shall in any wise touch or concern the Administration or Execution of Justice*; and the Words are strongly Pen'd against Corruption of Officers, for they are, *Which shall in any wise touch or concern the Administration, &c.* And the Preamble; *And for avoiding of Corruption, which may hereafter happen to be in the Officers and Ministers of those Courts, Places, and Rooms, wherein there is requisite to be had the true Administration of Justice, in Services of Trust: And to the Intent that Persons worthy and meet to be advanced to the Places where Justice is to be Ministred, in any Service of Trust to be Executed, should be preferred to the same, and none other.* Which Act being made for avoiding of Corruption in Officers, &c. and for the Advancement of Persons more Worthy and sufficient for to Execute the said Offices, by which Justice and Right shall be also advanced,

ced, shall be Expounded most beneficially to suppress Corruption. And in as much as the Law allows Ecclesiastical Courts to proceed in Case of Blasphemy, Heresie, Schism, Incontinence, &c. And the Loyalties of Matrimonies, of Divorce, of the Right of Tithes, Probat of Wills, granting of Administrations, &c. And that from these proceedings depend not only the Salvation of Souls, but also the Legitimation of Issues, &c.

And that no Debt or Duty can be recovered by Executors, or Administrators, without Probat of Testaments, or Letters of Administrations, and other things of great consequence; It is most reason that such Officers which concern the Administration and Execution of Justice in these Points, which concern the Salvation of Souls, and the other matters aforesaid, shall be within this Statute, than Officers which concern the Administration or Execution of Justice in Temporal matters; for this, that Corruption of Offices in the said Spiritual and Ecclesiastical Causes, is more dangerous than the Officers in Temporal Causes; for the Temporal Judge commits the Party Convict to the Goaler, but the Spiritual Judge commits the Person Excommunicate to the Devil. Also those Officers do not only touch and concern the Administration of Justice, &c. But also are Services of great Trust, for this, that the principal End of their proceedings is, *Pro Salute Animarum*, &c. And there is no Exceptors or Proviso in the Statute for them.

It was resolved that such Offices were within the Purview of the said Statute.

*Here follows the Duty of a Goaler to his Prisoners, with
his and other Officers Fees due by Law.*

BY the Common Law we find, as *Bracton* Lib. 3. fol. 105. *Goalers are ordained to hold Prisoners, not to punish them.* For Imprisonment by the Law is (neither ought to be) no more than a bare restraint of Liberty, without those illegal and unjust Distinctions of close and open Prison (as is usual) See *Stamf. Ple. Cro.* fol. 70.

Therefore *Cook* in his 3 *Inst.* 91. saith, *That if the Goaler keep the Prisoners more streightly then he ought of right, where- of the Prisoner dieth, this is Felony in the Goaler by the Common Law.* And this is the Cause, *That if a Prisoner dye in Prison, the Coroner ought to sit upon him.* See also the said *Cook* Fol. 34. *Cap. Petty Treason*; how Prisoners are to be used wherein is also an account of an Indictment of a Goaler for evil usage of his Prisoner *Fol. 35. in Trin. Term. 7. E. 3. cor Rege rot.* 44.--- That whereas one *R. B.* of *T.* was taken and detained in the Prison of *Lincoln Castle*, for a certain Debt of Statute Merchant, in the Custody of *T. B.* Constable of the Castle *L.* *aforsaid*; That the said *T. B.* put the said *R.* into the Common-Goal amongst Thieves, in a filthy Prison, contrary to the form of the Statute, &c. and there detained him, till he had paid him a Fine of 40 s. Whereupon *Cook* makes this Observation, *So as hereby it appeareth, where the Law requireth that a Prisoner should be kept in safe and sure Custody; yet that must be without any pain or torment to the Prisoner.* *Britton* fol. 18. *Flet. lib. 1. c. 26.* *1 E. 3. cap. 7.*

So *Co.* 3. *Inst.* 52. saith, *If a Prisoner by the Dures, that is hard usage of the Goaler, cometh to untimely Death, this is Murder in the Goaler.* And in the Law implieth Malice, in respect of the Cruelty.

Horn, in the *Mirror of Justice*, page 288. saith, *That it is an Abusion of the Law, that Prisoners are put into Irons, or other pain, before they are Attainted.*

See also *Cook* 3. *Inst.* 34, 35.

And *Horn* also pag. 34, 36. Reckons the starving of Prisoners by Famine, to be among the Crimes of *Homicide* in a Goaler. *Vox plebis par. 1. f. 55, 56.*

Which also *Cook* in his 3 *Inst.* Chap. 29. Title of *Felony in Goalers by Dures* of Imprisonment, &c. by Statute and by the Common Law. *fo. 91.*

And next, let us see what the Law saith for the Fees due to Goalers. The *Mirror of Justice*, pag. 288. tells us, *That it is an Abusion of the Law, that Prisoners or others for them, to pay any thing for their Entries into the Goal, or for their Going out: This is the Common Law, there is no Fee due to them by the Common Law.* See what the Statutes say, The Statute of *Westm.* 1. chap. 26. saith. "That no Sheriff, or other
" Minister of the King, shall take Reward for doing their Offices, but
C " what

" what they take of the King, if they do they shall suffer double to the Party aggrieved, and be punished at the will of the King. Under this word, *Minister of the King*, are included, *all Escheators, Coroners, Goalers, and the like*. See *Cook* 2 Inst. fol. 209. affirms. And agreeable is *Stampf. pl. Coron.* 49. Nay by the Statute of 4. E. 3. Chap. 10. Goalers are to receive *Thieves* and *Fellons*, taking nothing by way of Fees for the receipt of them. So odious is this Extortion of Goalers that very *Thieves* and *Fellons* are exempt from payment of Fees.

And we find in our Law-Books, That no Fees are due to any Officer, Goaler, or Minister of Justice, but only those which are given by Act of Parliament, for if a Goaler will prescribe for any Fees, the Prescription is void, because against this Act of Parliament, made 3 E. 1. being an Act made within time of Memory, and takes away all manner of pretended Fees before; and we are sure none can be raised by colour of prescription since: And therefore we find by the Books of 8. E. 4. fol. 18. *That a Marshal or Goaler cannot detain any Prisoner after his discharge from the Court, but only for the Fees of the Court* (the Court being not barred by this Statute of *Westm.* 1. aforementioned) *and if he do, he may be Indicted for Extortion*. And agreeable to this is the Book of 21 F. 7. Fol. 16. where amongst other things it's held for Law, *That if a Goaler or Guardian of a Prison, takes his Prisoners proper Garment, Cloak, or Money from him, it is a Trespass, and the Goaler shall be answerable for it*: So that we may undeniably conclude, That there is no Fee at all due to any Goaler or Guardian of a Prison from the Prisoner, but what is due unto him by special Act of Parliament.

And if a Goaler or Guardian of a Prison, shall take any thing as a Fee of his Prisoner, he may and ought to be *Indicted* of *Extortion*, and upon Conviction to be removed from his Office; and if his Prisoner, by Constraint, Menace, or Dures, be enforced to give him Money; he may recover that Money against the Goaler again, in an Action of the Case at Common Law.

Stat. 23. H. 6.
Chap. 10.

Stat. 4. H. 4. 5.

Rast. predict. fol.
318.

Cook predict. 365.

21. H. 7. fol. 16.

Arrested or Attached, for the omitting of any Arrest or Attachment to be made by their Body, or of any person by them, or any of them (by force or colour of their Office Arrested or Attached) for Fine, Fee, Suit of Prison, Mainprise, letting to Bail, or shewing any Ease or Favour (to any such Person Arrested or to be Attached) for their Reward or Profit; but such as follow, that is to say, For the Sheriff 20 *d.* The Officer which maketh the Arrest or Attachment, 4 *d.* And the Goaler of the Prison if he be committed to Ward, 4 *d.*——And that all Sheriffs, Bailiffs, Goalers,

Item, The King Considering the great Perjury, Extortion, and Oppression, which he and have been in this Realm by his Sheriffs, Under-Sheriffs, and their Clerks, Bailiffs, and Keepers of Prisons, &c. hath ordained by Authority aforesaid, in eschewing all such Extortion, Perjury, and Oppression, that no Sheriff shall let to Farm in any manner his County, nor any of his Bailiwicks. Nor that any of the said Officers and Ministers, by occasion, or under colour of their Office, shall take any other thing by them, nor by any other person to their use, profit, or avail, if any person by them or any of them to be

Goalers, or any other Officer or Ministers, which do contrary to this Ordinance, in any Point of the same, shall lose to the Party in this behalf indammaged or grieved, his treble Damages, and shall forfeit the Sum of 40 *l.* for every such Offence, the one Moiety to the King, the other to the Prosecutor, to be Recovered at Common Law, in either of the Courts of Kings-Bench, or Common-Pleas at Westminster. Stat. 21. Ed. 6.

This is a perfect Account of the Goalers Fees in all Cases, where Persons are laid in Prison upon Civil Matters and Causes, which Fee of 4 *d.* is more then any other Statute or Law allows them to take from their Prisoners: But in such Cases where the King is Party, it's established, " That the Prisoners in all the Kings Prisons should be maintained at the Kings Charge, and out of the Kings Revenues, according to the Old Law " of the Land, much less to have Money extorted from him by the Goaler. But look into the Prisons in and about the City of London, what horrible Oppressions, Extortions and Cruelties, are Exercised upon the Free-born People of England, yea in most Prisons throughout this Kingdom.

So that by the Laws of the Land it appears, that those who sell, or take any manner of Reward for any Publick Office or Place, or those who do receive any greater Fee than therein is exprest, have no more Property, Right or Interest to do it, than the Pirate has to the peaceable Merchant-mans Ship, a Robber to the innocent Traveller's Purse, or the Wolf to the blood of the harmless Lamb.

All which is most humbly submitted to the serious Consideration of this Honourable House, That the said Matters may be referr'd to a Committee who shall be empowered to receive such humble Proposals as shall be offered, for a lasting provision to prevent the practice of the like Enormities and Cruelties; the which, as it will be pleasing to the Great God of Justice and Mercy, will be of General Relief to the Oppressed, a Monument of Honour to the Kingdoms Noble Patriots, and of General Advantage to Trade and Traders.

Licensed, May 14, 1689.

F I N I S.